

REMARKS

These remarks follow the order of the outstanding Office Action beginning at page 2 thereof.

Applicant has reviewed the rejection of claims 1 and 2 and has amended claim 1 to overcome rejections based upon prior art and amended claim 2 to overcome rejections based upon 35 USC § 112. Applicant notes that claim 2 has not been rejected on the basis of prior art.

35 USC § 102

Claim 1 has been rejected under 35 USC § 102 as being anticipated by '060 or '769. Applicant notes that these two patents are assigned to the same owner, and are in fact, linked since '769 incorporates by reference the '060 patent.

The '060 reference includes the disclosure of the sensor (2) when it is used as a CO<sub>2</sub> detector. The Examiner has referred to column 3, lines 44 - 52. In this portion, the specification refers to a membrane or solid layer that permits passage of gas molecules, but prevents passage of ions. However, this portion does not state what the sensor material is or where it is located. As found in example 3, found at column 6, lines 5 - 21, the membrane is an indicator membrane which has been air dried for 24 hours and cut into circles. This membrane is then attached to the bottom of the container as shown in Figure 1. Applicant has now amended claim 1 to more specifically recite Applicant's invention by requiring that the sensing material be a fluid, not the autoclave type materials

discussed in '060. Still further, these are very different from the air dried materials discussed in '060. As shown in Applicant's Figure 1(a), the fluid (8a) is contained in an area below a membrane (4a) which allows passage of gasses. This is what is now claimed in claim 1. Applicant respectfully submits that the '060 reference, and its subsequent reference '769 fail to teach the use of the fluid and the membrane which permits only gas to flow from the medium portion to the fluid indicator portion, as now set forth in claim 1. For this reason, claim 1 now defines over the art of record.

Claim Rejections - 35 USC § 112

Applicant has amended claim 2 to overcome all rejections under 35 USC § 112. Claim 7 differs from claim 2 because it does not require a "fluid" indicator. This is consistent with claim 2 and 5 as originally filed. Initially, at the top of page 4 the Examiner has rejected claim 2 as failing to be supported by examples or data. Applicant respectfully traverses this rejection as not being germane to the invention. Applicant teaches in the specification that the comparison of measured time against contents of a table is prepared by use of a table which is prepared from the same materials used in the indicator portion (such as 8a). The pre-collected time data is from the same medium portion, predetermined microorganisms, and standard indicator portions. Stated another way, Applicant establishes a base line for the step (e) of claim 2. This base line is the table which holds the pre-collected time data on each microorganism. Applicant teaches in

th specification, such as at page 20, lines 6 - 18, page 21, lines 1 - 15, page 5 in its entirety, and page 8, last two lines through page 9.

Applicant respectfully submits that the art does not require Applicant to teach the methods described in the specification such as specific culture conditions. Instead, Applicant teaches that the culture conditions are to be identical, and what they might be precisely is not of importance. Also, the mix of types of organisms present, growth states, culture mediums selected, pH and temperature, etc., are all identical. This is how the basil is established in Applicants invention.

Claim Rejections - 35 USC § 112 (Second Paragraph)

At the bottom of page 4, the Examiner has rejected claims 1 and 2 as being indefinite. Applicant has amended the claims to recite that the color "changes". Applicant has amended claims 1 and 2 to show how the indicator fluid is isolated from the medium fluid, has amended claim 1 (c) to correct what is clearly a typographical error, and included a step of determining color-change in the claims. Applicant has also amended the claims where observed to make necessary correction for antecedent basis.

Title

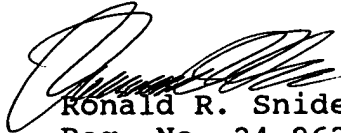
At the top of page 5 the Examiner has objected to the title. The title has now been amended to more precisely state the invention. should the Examiner have further objections to the title, it is requested that this matter be settled by telephone conversation and Examiner's amendment.

Abstract

The abstract has been amended to confirm to MPEP § 608.01(b).

In view of the foregoing, it is respectfully submitted that the application is now in condition for allowance, and early action in accordance thereof is requested. In the event there is any reason why the application cannot be allowed in this current condition, it is respectfully requested that the Examiner contact the undersigned at the number listed below to resolve any problems by Interview or Examiner's Amendment.

Respectfully submitted,

  
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